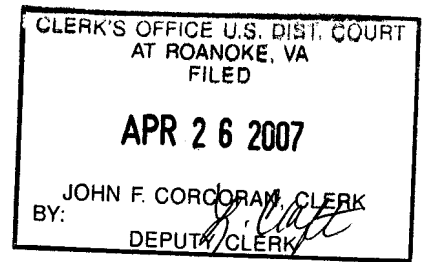


IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION



OTIS ANTONIO SMITH,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Civil Action No. 7:06CV00391

**FINAL ORDER ADOPTING REPORT
AND RECOMMENDATION**

By: Samuel G. Wilson,
United States District Judge

Otis Antonio Smith brings this 28 U.S.C. § 2255 petition, alleging that his counsel provided ineffective assistance by failing to object to certain information contained in the pre-sentence report and by failing to file a notice of appeal. The respondent filed a motion to dismiss, and by order entered January 17, 2007, the court referred the matter to United States Magistrate Judge Michael Urbanski for an evidentiary hearing to determine whether petitioner requested that his attorney file an appeal. The Magistrate Judge conducted a hearing on February 12, 2007. The Magistrate Judge has filed a Report and Recommendation pursuant to 28 U.S.C. § 636(b)(1)(B), recommending that respondent's motion to dismiss be granted and that Smith's motion for relief pursuant to 28 U.S.C. § 2255 be dismissed. Smith filed timely objections. The court has reviewed the Magistrate Judge's report, pertinent portions of the record, and Smith's objections.

It is hereby **ORDERED** and **ADJUDGED** that the Magistrate Judge's report is **ADOPTED** in its entirety, that the respondent's motion to dismiss is **GRANTED**, and that Smith's suit is **DISMISSED** and **STRICKEN** from the active docket of the court.

The Clerk of Court is directed to send certified copies of this Order to the petitioner and counsel for the respondent.

ENTER: This April 25, 2007.



UNITED STATES DISTRICT JUDGE